

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1677 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge? : NO

SABUBHAI LALJIBHAI KATARA

Versus

STATE OF GUJARAT

Appearance:

MS SUBHADRA G PATEL for Petitioner
MR KT DAVE, AGP for Respondent Nos. 1 to 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 19/04/2000

ORAL JUDGEMENT

#. District Magistrate, Dahod, passed an order on August 23, 1999, in exercise of powers under section 3(1) of the Gujarat Prevention of Anti-Social Activities Act, 1985 ("PASA Act" for short), detaining the detenue Sabubhai Laljibhai Katara under the provisions of the PASA Act.

#. Detaining authority took into consideration four offences registered against the detainee with Dahod Town/Dahod (Rural) Police Stations. The detaining authority also took into consideration the statements of four witnesses and came to a conclusion that the activities of the detainee are that of a dangerous person and he is required to be immediately prevented from pursuing his illegal and anti-social activities and therefore, he is required to be detained under the PASA Act. The authority observed that resorting to less drastic remedies under the ordinary laws may not prove to be efficacious. The detaining authority also observed that the powers under section 9(2) of the PASA Act are required to be exercised as the incidents narrated by the witnesses and the fear expressed by them qua the detainee are correct and genuine and therefore, their identity is required to be not disclosed in exercise of powers under section 9(2) of the PASA Act in public interest.

#. The detainee challenges the order of detention on various grounds. However, Ms. Subhadra Patel, learned advocate appearing for the petitioner submits that the statements of anonymous witnesses have not been properly verified by the detaining authority and therefore, there is improper exercise of powers under section 9(2) of the PASA Act affecting the right of the detainee of making an effective representation. So far as the other offences are concerned, Ms. Patel submitted that there is no disturbance to public order and therefore, the satisfaction of the detaining authority that the activity of the detainee is detrimental to public order cannot be considered as genuine. She submitted that the petition may be allowed.

3.1 Ms. Patel has produced on record, today, communications dated October 18, 1999 and October 14, 1999 received from the detaining authority - District Magistrate and from the government respectively.

#. Mr. K.T. Dave, learned AGP has opposed this petition.

#. Considering the rival side contentions, it may be noted that the statements of anonymous witnesses have not been verified by the detaining authority at all. The detaining authority has placed reliance on verification by Dy.S.P. and Additional District Magistrate for arriving at a subjective satisfaction about the correctness and genuineness of the fear expressed by the witnesses qua the detainee of the need for exercise of powers under section 9(2) of the PASA Act in public

interest vis-a-vis the right of the detenue of making an effective representation. Over and above this defect, the detaining authority has observed that it has found the fear to be genuine, whereas there is no basis for recording this subjective satisfaction.

#. Therefore, the exercise of powers under section 9(2) of the PASA Act by the detaining authority cannot be considered as proper or genuine. This will have an adverse effect on the right of the detenue of making an effective representation contemplated under Article 22(5) of the Constitution of India.

#. So far as the registered offences are concerned, they relate to theft mainly and a look at the papers relating to those offences clearly indicate that there was no disturbance to public order at all. At the most, it can be said to be a problem relating to law and order and not public order. The satisfaction of the detaining authority, therefore, regarding the activities of the detenue being detrimental to public order cannot be considered as genuine. The order based on such subjective satisfaction, therefore, cannot be sustained.

#. It is worth noting that the detaining authority has rejected the representation made on behalf of the detenue after having been become functus officio i.e. after the approval of the order of detention by the State Government. This, detaining authority was not authorized to do. This also can be said to have affected the right of the detenue of making an effective representation. This would also vitiate the continued detention.

#. For the above stated reasons, the petition deserves to be allowed. The same is allowed. The impugned order dated August 23, 1999 is hereby quashed and set aside. The detenue - Sabubhai Laljibhai Katara is ordered to be set at liberty forthwith, if not required in any other matter. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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